

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JOHN D. PAMPLIN,

V.

Petitioner,

Case No. 3:20-cv-00655-RCJ-WGC

## ORDER

PERRY RUSSELL, et al.,

## Respondents.

Petitioner John D. Pamplin has filed a motion to proceed *in forma pauperis* and a pleading styled as a “motion to vacate sentence.” (ECF No. 1). With the latter, Pamplin seeks relief from a state court judgment of conviction entered in 2002. This court lacks jurisdiction to address Pamplin’s pleading, and this proceeding will be dismissed.

20 While a prisoner may challenge a federal sentence under 28 U.S.C. §2255, a petition for  
21 writ of habeas corpus is the exclusive remedy in federal court to challenge a state court  
22 conviction or sentence. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). Further, the court  
23 takes judicial notice of the proceedings in case no. 3:08-cv-00007-RCJ-VPC. In that case,  
24 initiated by Pamplin in 2008, Pamplin sought federal habeas corpus relief from the same state  
25 court conviction. His petition was dismissed on January 14, 2011, and this court denied a  
26 certificate of appealability (ECF Nos. 34 and 35 in case no. 3:08-cv-00007-RCJ- VPC). Pamplin

1 appealed, and the Ninth Circuit Court of Appeals denied his request for a certificate of  
2 appealability on December 20, 2011 (ECF No. 44 in case no. 3:08-cv-00007-RCJ-VPC).  
3 Pamplin petitioned the United States Supreme Court for certiorari, and the petition for certiorari  
4 was denied on May 14, 2012 (ECF No. 45 in case no. 3:08-cv-00007-RCJ-VPC). On June 11,  
5 2018, Pamplin filed a “Request for Rehearing on Original and Amended Petitions” (ECF No. 46  
6 in case no. 3:08-cv-00007-RCJ-VPC). That motion was denied on June 18, 2018 (ECF No. 48 in  
7 case no. 3:08-cv-00007-RCJ-VPC). Pamplin appealed from the June 18, 2018, order, and the  
8 court of appeals denied his request for a certificate of appealability on November 16, 2018 (ECF  
9 No. 52 in case no. 3:08-cv-00007-RCJ-VPC).

10 Pamplin must obtain permission from the Ninth Circuit under 28 U.S.C. § 2244(b) to file  
11 a second or successive petition for writ of habeas corpus. Without such permission, this court is  
12 without jurisdiction to entertain a challenge to his state court conviction or sentence. *See Burton*  
13 *v. Stewart*, 549 U.S. 147, 153 (2007). Consequently, this action is dismissed.

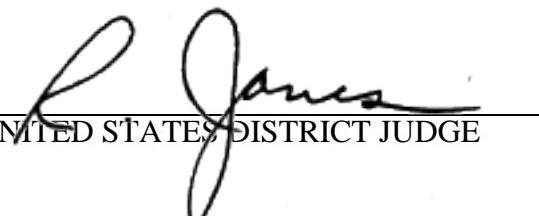
14 IT IS THEREFORE ORDERED that petitioner’s motion to proceed *in forma pauperis*  
15 (ECF No. 1) is DENIED as moot. The Clerk shall DETACH and FILE his “motion to vacate  
16 sentence,” which is also DENIED.

17 IT IS FURTHER ORDERED that this proceeding is DISMISSED for lack of jurisdiction.  
18 The Clerk shall enter judgment accordingly and close this case.

19 IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

20 DATED THIS 8th day of January, 2021.

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UNITED STATES DISTRICT JUDGE